



Jennifer R. Asbrock

Member

502.779.8630 (t)

502.581.1087 (f)

jasbrock@fbtlaw.com

November 7, 2016

Lyle W. Cayce, Clerk
U.S. Court of Appeals
for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: *Convergys Corp. v. NLRB*, Case No. 15-60860

Dear Mr. Cayce:

Pursuant to Fed R. App. P. 28(j), we bring the Court's attention to a recent decision relevant to Convergys' position in the above-referenced lawsuit. This case supports Convergys' argument that a class or collective waiver does not violate Section 8(a)(1) of the National Labor Relations Act (the "Act"), consistent with the Fifth Circuit's decision in *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *denying enforcement in relevant part of 357 NLRB 2277* (2012), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014). See Convergys Brief at 8-13.

In *Employers Resource v. NLRB*, 5th Circuit No. 16-60034, 2016 WL 6471215 (November 1, 2016), the Fifth Circuit Court of Appeals granted Employers Resource's petition for review of the National Labor Relation Board's Decision and Order which found that Employers Resource "violated Section 8(a)(1) of the Act by maintaining and enforcing an arbitration provision that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial." *Employers Res. & Talina Torres*, 363 NLRB No. 59, *1 (Dec. 17, 2015). Following the Fifth Circuit's rule of orderliness, the Court granted Employers Resource's petition for review and denied the National Labor Relations Board's cross-application for enforcement of its order, as there has been no intervening change in the law since its decisions in *D.R. Horton, Inc. v. NLRB*, and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015), *denying enforcement in relevant part of 361 NLRB No. 72*, 2014 WL 5465454 (Oct. 28, 2014), *petition for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016). *Employers Resource*, at *1.

Respectfully submitted,

/s/ Jennifer R. Asbrock

Jennifer R. Asbrock

CC: All counsel through CM/ECF

Enclosure

400 West Market Street | 32nd Floor | Louisville, KY 40202-3363 | 502.589.5400 | frostbrowntodd.com

Offices in Indiana, Kentucky, Ohio, Pennsylvania, Tennessee, Texas, Virginia and West Virginia

1160264.0594933 4812-5384-3003v2